

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 185 of 1999
in
SPECIAL CIVIL APPLICATION No 407 of 1992
with
LETTERS PATENT APPEAL No 209 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT Sd/-
and
Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO
1 & 2 YES; 3 to 5 NO

PRAVINSINH DOLATSINH RANA

Versus

STATE OF GUJARAT

Appearance:

1. LETTERS PATENT APPEAL No. 185 of 1999
MR NK MAJMUDAR for Appellant No. 1
MR RC KODEKAR AGP for Respondents No. 1-4
 2. LETTERS PATENT APPEAL No. 209 of 1999
MS SEJAL K MANDAVIA for Appellant No. 1
MR NK MAJMUDAR for Respondent No. 1
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CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE D.H.WAGHELA

Date of decision: 22/03/2002

C.A.V. JUDGEMENT

(Per : MR.JUSTICE D.H.WAGHELA)

1. Both these Letters Patent Appeals seek to challenge the same judgment by which the original petitioner is directed to be considered for employment with consequential benefits from a back-date. For the sake of convenience, the original petitioner is hereby referred as 'the petitioner' and the original respondent is referred as 'the respondent'.

2. The relevant facts in brief are that the petitioner was temporarily appointed as a multi-purpose health worker by an order dated 5.12.1988 subject to the condition, inter alia, of being subsequently selected by the Panchayat Selection Committee with the entire responsibility of passing through all the stages of selection procedure being upon the petitioner. When the petitioner was required to appear before the Selection Committee on or before 15.1.1991, he could not do so because of being posted in a remote village where he could not come to know about the advertisement issued to inform such appointees. Therefore, by an order dated 6.1.1992, his service was terminated and that order was under challenge in the petition. He also sought one more chance of appearing before the Selection Committee and regularization of his service in terms of the Government Circular dated 20.3.1992. After hearing the parties and the respondent offering to consider the case of the petitioner at the time of the next selection process expected to be undertaken in the year 1993-94, if the petitioner applied for the same, by an interim order, the petitioner was permitted to apply at such process. However, the meeting of the Selection Committee was held in the year 1996, when, under a separate order dated 24.6.1996 in a civil application, the petitioner was called for interview and he was selected and placed at serial No.3 in the selection list. But he was informed by letter dated 8.10.1996 that he could not be appointed on account of having crossed the age-limit prescribed by the recruitment rules. The other candidates selected along with the petitioner came to be appointed on 4.10.1996. There is no dispute about the fact that the petitioner was within the age-limit at the time when he was first appointed.

3. Considering the above facts, the learned single Judge upheld the order of termination dated 6.1.1992 on the ground that the petitioner had failed to appear before the Selection Committee in December, 1990-January 1991 whereby the condition of the first appointment was violated. However, in view of the fact that subsequently under the order of the Court the petitioner had appeared before the Selection Committee in 1996 and was also selected and another candidate below his place in the selection list was appointed and the petitioner was denied appointment only on the ground of age-bar, the petitioner was ordered to be considered for appointment by order dated 1.2.1999 with all consequential benefits except financial benefits for the period from 4.10.1996 to 1.2.1999. Thus, the petition came to be partly allowed on the basis of the interim orders and the facts unfolding during the pendency of the petition.

4. The petitioner has challenged the aforesaid judgment and order insofar as the backwages and seniority from the date of initial appointment were denied to him. Considering that grievance first, it was seen that the termination of service by the order dated 6.1.1992, as the necessary consequence of violation of the condition of appointment, had to be upheld and no ground was made out to interfere with the same. Therefore, no question of granting reinstatement, backwages or seniority from that date arises. Thereafter, holding of interview and initiation of process of selection as late as in the year 1996 was not attributable to any fault of either of the parties. And, the question of appointment of the petitioner despite crossing of the age-limit being decided by the Court in January 1999, it would have been unfair to award backwages to the petitioner for the period from the date of his notional appointment after being selected to the date of the actual employment.

5. The original respondent has assailed the impugned judgment on the grounds that the interim direction allowing the petitioner to apply for selection as also final direction to appoint only on the basis of inclusion of his name in the select list were wrong and required to be set aside. It was further submitted that in the year 1995-96 when the advertisement for next selection process was issued, the petitioner was already aged 29 years while the upper age-limit for the post under the recruitment rules was only 25 years. Thus, the final direction to appoint the petitioner was in violation of the rules regarding age-limit, according to the submission. It must be noted that the earlier interim

direction in the petition was practically invited by the respondent in order to allow the petitioner one more chance of appearing before the Selection Committee. Obviously, an exception, in view of the peculiar circumstances of the petitioner having once been selected and appointed and having failed to appear on account of being unaware of the advertisement to appear before the Selection Committee, was made thereafter, the respondent could not be allowed to advance the plea that the petitioner had already crossed the age-limit. In any case, the petitioner was once appointed and the matter of his confirmation was pending before the Court, during which period he crossed the age-limit. Under such circumstances, the impugned judgment and order was eminently just, logical and reasonable in the peculiar facts and circumstances of the case.

6. In the facts and for the reasons discussed hereinabove, we do not deem it expedient to interfere with the impugned judgment and order and, therefore, dismiss both the appeals at the threshold with no order as to costs.

Sd/-

(J.N.Bhatt, J.)

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)